

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KHALID MOHAMMAD,

Plaintiff,

vs.

No. CIV 16-0764 JB/WPL

ALBUQUERQUE POLICE DEPARTMENT;
THE METROPOLITAN COURT and
METROPOLITAN DENTENTION CENTER,

Defendants.

**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

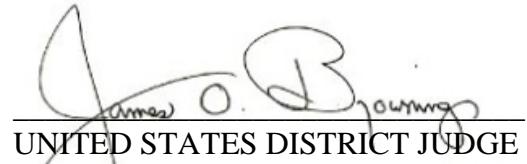
THIS MATTER comes before the Court on Plaintiff's Motion to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA), filed November 15, 2016 (Doc. 31) ("Motion"). Plaintiff Khalid Mohammad filed claims against Defendants Albuquerque, New Mexico Police Department; the Albuquerque, New Mexico Metropolitan Court; and the Bernalillo County Metropolitan Detention Center, pursuant to 42 U.S.C. § 1983, the New Mexico Tort Claims Act, NMSA § 41-4-12, and the Fourteenth Amendment to the Constitution of the United States of America. See Amended Complaint Pursuant to § 41-13-1 through § 41-13-3 NMSA 1978 ¶¶ 1-57, at 1-17, filed July 1, 2016 (Doc. 1-2) ("Complaint"). All three entities filed motions to dismiss. See Defendant Metropolitan Detention Center's Motion to Dismiss and Supporting Memorandum, filed July 6, 2016 (Doc. 12); Defendant Albuquerque Police Department's (Non-Suable Entity) Motion to Dismiss Plaintiff's Complaint with Prejudice, and Memorandum to Support, filed July 6, 2016 (Doc. 13); Metropolitan Court's Motion to Dismiss, filed July 8, 2016 (Doc. 14). On September 16, 2016, the Court granted the motions to dismiss and allowed Mohammad twenty-one days to file an amended complaint. See Memorandum

Opinion and Order, filed September 16, 2016 (Doc. 28)(“MOO”). Mohammad did not file an amended complaint. The Court entered Final Judgment on October 31, 2016, and dismissed the case without prejudice. See Final Judgment, filed October 31, 2016 (Doc. 29).

“In order to succeed on [a motion for leave to proceed in forma pauperis on appeal], an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991). “An appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “The Supreme Court has held that good faith is to be judged by an objective standard, for review of any issue ‘not frivolous.’” Spearman v. Collins, 500 F. App’x 742, 743 (10th Cir. 2012)(quoting Coppedge v. United States, 369 U.S. 438, 445 (1962)). “An appeal is frivolous when the result is obvious, or the appellant’s arguments of error are wholly without merit.” Spearman v. Collins, 500 F. App’x at 743 (quotation omitted). See also Thompson v. Gibson, 289 F.3d 1218, 1222 (10th Cir. 2002)(noting that an appeal is frivolous if it “lacks an arguable basis in either law or fact”).

Mohammad’s financial affidavit shows that he is unable to pay the filing fee. See Motion at 2-10. Mohammad did not, however, fill out the portion of the IFP application that provides space to identify “issues on appeal.” See Motion at 2. Because Mohammad made no statement of issues on appeal, he has not identified any argument of error regarding the Court’s dismissal of his claims. He does not summarize facts, restate causes of action, or make any attempt at isolating reviewable issues. Accordingly, the Court concludes that Mohammad’s appeal is not taken in good faith and therefore denies his Motion.

IT IS ORDERED that the Plaintiff's Motion to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA), filed November 15, 2016 (Doc. 31), is denied.



UNITED STATES DISTRICT JUDGE

Parties and Counsel:

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Albuquerque, New Mexico

Plaintiff, pro se

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